

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #11	CCRB Case #: 201909062	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tue, 10/15/2019 8:15 PM	Location of Incident: New Lotts Avenue between Essex Street and Linwood Street	Precinct: 75	18 Mo. SOL 04/15/2021	EO SOL 11/30/2021	
Date/Time CV Reported Wed, 10/16/2019 3:42 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/16/2019 3:42 PM		

Complainant/Victim	Type	Home Address
1. [REDACTED]		

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Morgan	07698	949365	075 PCT
2. POM John Plumitallo	16755	961108	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM John Plumitallo	Abuse of Authority: Police Officer John Plumitallo stopped [REDACTED]	A . Unsubstantiated
B . POM Kevin Morgan	Abuse of Authority: Police Officer Kevin Morgan stopped [REDACTED]	B . Unsubstantiated
C . POM John Plumitallo	Abuse of Authority: Police Officer John Plumitallo frisked [REDACTED]	C . Unsubstantiated
D . POM John Plumitallo	Abuse of Authority: Police Officer John Plumitallo searched [REDACTED]	D . Unsubstantiated
E . POM Kevin Morgan	Discourtesy: Police Officer Kevin Morgan spoke discourteously to [REDACTED]	E . Substantiated
F . POM John Plumitallo	Abuse of Authority: Police Officer John Plumitallo failed to provide [REDACTED] with a business card.	F . Substantiated
G . POM Kevin Morgan	Abuse of Authority: Police Officer Kevin Morgan failed to provide [REDACTED] with a business card.	G . Substantiated
H . POM John Plumitallo	Other: Police Officer John Plumitallo failed to prepare a memo book entry as required.	H . Other Misconduct
I . POM Kevin Morgan	Other: Police Officer Kevin Morgan failed to prepare a stop and frisk report as required.	I . Other Misconduct
J . POM John Plumitallo	Other: Police Officer John Plumitallo failed to prepare a stop and frisk report as required.	J . Other Misconduct
K . POM Kevin Morgan	Other: Police Officer Kevin Morgan improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	K . Other Misconduct
L . POM John Plumitallo	Other: Police Officer John Plumitallo improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	L . Other Misconduct

Case Summary

On October 16, 2019, [REDACTED] filed this complaint with the CCRB by phone.

On October 15, 2019, at approximately 8:15 p.m., on New Lotts Avenue between Essex Street and Linwood Street in Brooklyn, Mr. [REDACTED] was walking on the sidewalk when he observed PO Kevin Morgan and PO John Plumitallo of the 75th Precinct in an unmarked black Chevrolet Impala. (PO Morgan has since been transferred to the 75th Precinct detective squad). Mr. [REDACTED] recognized that these were police officers because he had seen plainclothes officers driving around the neighborhood in this type of vehicle before. Mr. [REDACTED] crossed the crosswalk in front of PO Morgan and PO Plumitallo, turned around and looked at them, and continued walking. PO Morgan and PO Plumitallo exited the vehicle and stopped Mr. [REDACTED] (**Allegation A and B: Abuse of Authority – Stop, unsubstantiated**). PO Plumitallo frisked Mr. [REDACTED] (**Allegation C: Abuse of Authority – Frisk, unsubstantiated**) and allegedly searched his pocket (**Allegation D: Abuse of Authority - Search (of person), unsubstantiated**). The officers informed Mr. [REDACTED] that they had to make sure he did not have a gun on him because his wallet had created a bulge.

Mr. [REDACTED] continued to discuss the stop with the officers during which PO Morgan told Mr. [REDACTED] that he needed to educate himself and called him “stupid, uneducated, ignorant, and dumb,” (**Allegation E: Discourtesy – Word, substantiated**). At the end of the incident, PO Morgan and PO Plumitallo failed to provide Mr. [REDACTED] with a business card (**Allegation F and G: Abuse of Authority – Failure to provide RTKA card, substantiated**).

PO Plumitallo did not make a memo book entry in regard to this incident (**Allegation H: Other misconduct – Failure to prepare a memo book entry**). Neither PO Morgan nor PO Plumitallo filled out a stop report (**Allegation I and J: Other misconduct – Failure to produce a stop and frisk report**). Both PO Morgan and PO Plumitallo prematurely disengaged their body-worn cameras (**Allegation K and L: Other misconduct – Improper use of body-worn camera**).

This incident resulted in no summonses or arrests.

The investigation obtained one cell phone video (**BR 01; video** and **BR 02; summary**) and two body-worn camera videos (**BR 03, BR 04; videos** and **BR 05; summaries**). Relevant sections are discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer John Plumitallo stopped [REDACTED]

Allegation (B) Abuse of Authority: Police Officer Kevin Morgan stopped [REDACTED]

Allegation (C) Abuse of Authority: Police Officer John Plumitallo frisked [REDACTED]

Allegation (D) Abuse of Authority: Police Officer John Plumitallo searched [REDACTED]

It was undisputed that PO Morgan and PO Plumitallo stopped Mr. [REDACTED] and PO Plumitallo frisked Mr. [REDACTED]. It was disputed as to whether PO Plumitallo searched Mr. [REDACTED]'s pocket.

Mr. [REDACTED] consistently stated (**BR 06** and **BR 07**) that he was walking with his left hand and thick square shaped wallet in his left pants pocket. The imprint of the wallet was visible through the sweatpants' pocket. Mr. [REDACTED] was holding his phone in his right hand and was about to Facetime his friend when he observed PO Morgan and PO Plumitallo in an unmarked black Chevrolet Impala. Mr. [REDACTED] could tell that PO Morgan and PO Plumitallo were police officers because he was used to seeing officers driving black Chevrolet Impalas in his neighborhood. Mr. [REDACTED] turned his head to the left and looked at the officers as he crossed the street in the crosswalk. Mr. [REDACTED] continued walking on New Lotts Avenue toward Linwood Street. Mr. [REDACTED] felt that the officers were looking at him, so he turned his head to look at the officers behind him. PO Morgan's and PO Plumitallo's window was down, and they were looking at Mr. [REDACTED] and made eye contact.

PO Morgan and PO Plumitallo then made a left-hand turn onto New Lotts Avenue, crossed over the yellow lines into incoming traffic, and parked on the side of the road next to Mr. [REDACTED]. PO Morgan and PO Plumitallo asked Mr. [REDACTED] where he was going, instructed Mr. [REDACTED] to put his hands up and to take his hands out of his pockets. Mr. [REDACTED] asked what was going on. PO

Plumitallo did not answer and patted the outside of Mr. [REDACTED]'s pocket. PO Plumitallo entered Mr. [REDACTED]'s pocket, felt Mr. [REDACTED]'s wallet, and immediately took his hand out of Mr. [REDACTED]'s pocket. PO Plumitallo said that he stopped Mr. [REDACTED] because his wallet was bulky, and he had to make sure Mr. [REDACTED] did not have a gun.

PO Plumitallo stated (**BR 08**) that he and PO Morgan were at a stop sign when they observed [REDACTED] pass in front of the vehicle. It was a dark but lighted area. Mr. [REDACTED] looked at the vehicle and looked spooked like he knew they were police officers then he paused like he was about to change directions. PO Plumitallo was curious as to why Mr. [REDACTED] got so nervous. Then Mr. [REDACTED] continued westbound on New Lotts Avenue and kept looking over his shoulder as if he was nervous. There was an L-shaped bulge in Mr. [REDACTED]'s left pocket of his sweatpants swinging back and forth. To PO Plumitallo that indicated it was a possible firearm. PO Plumitallo first noticed the bulge when Mr. [REDACTED] passed the vehicle. Mr. [REDACTED] put his hand by that pocket and looked like he was going to take off and run. PO Plumitallo and PO Morgan pulled up the vehicle. PO Plumitallo did not remember whether there was a conversation about stopping Mr. [REDACTED] or whose decision it was to stop him. PO Plumitallo exited the vehicle, said, "Police," stopped Mr. [REDACTED], and frisked the area where he saw the L-shaped object to make sure it was not a firearm. The following factors made PO Plumitallo believe that Mr. [REDACTED] could have had a firearm: Mr. [REDACTED] noticing they were officers, looking over his shoulder, the L-shape in his pocket, and Mr. [REDACTED] putting his left hand by his pocket as if to conceal, cover, or hold the object. PO Plumitallo did not recall frisking anywhere else and did not recall putting his hand into pocket. PO Plumitallo felt a big wallet during the frisk and Mr. [REDACTED] stated it was his wallet. Mr. Julien was holding his phone to record the interaction however, PO Plumitallo believed Mr. [REDACTED]'s phone was not in his hand when he first observed Mr. [REDACTED] walking.

PO Morgan stated (**BR 09**) that he first observed [REDACTED] walking and allowed him to cross the intersection in front of the police vehicle. Mr. [REDACTED] appeared nervous because he looked straight into the vehicle, appeared to realize they were officers, stopped like a deer in headlights, appeared to consider changing directions, and then continued westbound on south side of New Lotts Avenue. This behavior caught PO Morgan's attention, so he observed Mr. [REDACTED] a little longer. PO Morgan based his assessment of Mr. [REDACTED]'s behavior off his experience with civilians from over 100-gun arrests, 50 of whom were people walking down the street making similar movements to Mr. [REDACTED]. Mr. [REDACTED] was looking over his shoulder at the officers as he was walking away. Mr. [REDACTED] appeared to have a heavy L-Shape object swinging back and forth as if it had significant weight in the left side pocket of his sweatpants. PO Morgan first noticed the object from approximately 10 feet away. The L-shape object signified to PO Morgan that it could be a gun. Mr. [REDACTED] looked back one more time. Based on PO Morgan's previous experiences this action gave an indication that Mr. [REDACTED] was going to take off running.

PO Morgan turned the corner and Mr. [REDACTED] grabbed near his left side pocket as if to conceal or stop the heavy object from swinging which rose PO Morgan's suspicion even more. PO Morgan did not remember whether he discussed stopping Mr. [REDACTED] with PO Plumitallo. PO Morgan made the decision to stop Mr. [REDACTED]. Mr. [REDACTED] stopped walking on his own and took his cellphone out of the left side pocket. PO Plumitallo exited the vehicle and frisked the pocket where they thought there was a possible firearm. PO Morgan had a clear line of sight of PO Plumitallo frisking Mr. [REDACTED]. PO Morgan did not think that PO Plumitallo entered the pocket. PO Morgan got out of the vehicle afterward. The bulge ended up being an oversized wallet and a cellphone.

PO Plumitallo's body-worn camera (**BR 03; video** and **BR 05; summary**) at 00:27 seconds, shows that Mr. [REDACTED] was holding his cellphone in his right hand when PO Plumitallo approached Mr. [REDACTED]. PO Plumitallo then frisks Mr. [REDACTED] however, PO Plumitallo's hands and Mr. [REDACTED]'s pocket are not depicted in the frame. PO Morgan's body-worn camera footage (**BR 04; video** and **BR 05; summary**) shows PO Morgan approaching Mr. [REDACTED] at 00:30 seconds. PO Plumitallo

appears to be frisking Mr. [REDACTED]; however, his hands are not captured in the frame. Mr. [REDACTED]'s video (**BR 01; video** and **BR 02; summary**) begins after the frisk and alleged search occurred.

Per PO Morgan's and PO Plumitallo's statements, their level of suspicion rose due to an L-shaped bulge in Mr. [REDACTED]'s pocket coupled with his nervous behavior such as apparently realizing PO Morgan and PO Plumitallo were officers, looking over his shoulder, almost changing direction, and placing his hand near his pocket. However, due to inconsistent statements regarding whether Mr. [REDACTED] had both his wallet and phone inside of his pocket or just his wallet, and a lack of video evidence, the investigation was unable to come to a preponderance of evidence as to whether there was an L-shaped bulge in Mr. [REDACTED]'s left pocket. For these reasons, the investigation was unable to determine whether there was reasonable suspicion that Mr. [REDACTED] committed a crime thus justifying a stop or whether PO Plumitallo had reasonable suspicion that Mr. [REDACTED] was armed thus justifying a frisk. Therefore, it is recommended that **Allegations A, B, and C** be *unsubstantiated*.

Due to inconsistent statements and a lack of video evidence, the investigation was unable to come to a preponderance of evidence as to whether PO Plumitallo searched Mr. [REDACTED]'s pocket. Therefore, it is recommended that **Allegation D** be *unsubstantiated*.

Allegation (E) Discourtesy: Police Officer [REDACTED] Morgan spoke discourteously to [REDACTED]

It was undisputed that PO Morgan told Mr. [REDACTED] that he needed to "educate" himself and called him "stupid," "uneducated," "dumb," and "ignorant."

Mr. [REDACTED] stated (**BR 07**) that he spoke to the officers about race and PO Morgan said, "Why do you want to bring up race? This is East New York, this is the most dangerous place in Brooklyn, people die every day here." PO Morgan also said, "You don't listen, you're stupid."

PO Morgan stated (**BR 09**) that he and PO Plumitallo gave the reason for the stop and Mr. [REDACTED] acknowledged that he understood but was not satisfied. Mr. [REDACTED] said it was a racial matter because he was Black, and officers were over-patrolling Black neighborhoods. Mr. [REDACTED] mentioned that there were a lot of white officers killing Black people and PO Morgan said there were a lot of Black people killing Black people in the neighborhood as well. PO Morgan stated that he said this because it was statistically accurate information that was printed out in the comp stat every month. PO Morgan wanted Mr. [REDACTED] to understand that the majority of the shootings were Black on Black.

The cellphone video provided by Mr. [REDACTED] (**BR 01; video** and **BR 02; summary**) captured the entire conversation which took place immediately following the stop and frisk. At 3:57 minutes, PO Plumitallo and PO Morgan start to walk toward their vehicle. PO Morgan says, "You want to get smarter you should try listening. Educate yourself." At 4:35 minutes, PO Morgan says, "You're welcome for this life lesson." Mr. [REDACTED] says, "What are you, my father now?" PO Morgan says, "If I were your father, I would have set you straight a long time ago." At 5:58 minutes, PO Morgan says, "You have no idea what you're talking about, you need to educate yourself." At 6:40 minutes, Mr. [REDACTED] says, "It frustrates you that I'm not listening," and PO Morgan replies, "Yeah because you're stupid, you don't know what you're talking about." At 6:49 minutes, PO Morgan continues, "You're uneducated yeah that's frustrating. You're ignorant." Mr. [REDACTED] says, "We're having a conversation," and PO Morgan says, "No we're not, I can't talk to someone as dumb as you." Mr. [REDACTED] says, "Look how frustrated it gets you," and PO Morgan replies, "Yeah, talking to a stupid person is frustrating." Mr. [REDACTED] says, "Fam, not everybody is stupid," and PO Morgan says, "Yeah, but you are."

PO Morgan initially stated that he never called Mr. [REDACTED] stupid. After viewing the cellphone footage during his interview, PO Morgan stated (**BR 09**) that he called Mr. [REDACTED] "stupid, uneducated, ignorant, and dumb," because Mr. [REDACTED] did not "base his conversation on facts or anything logical. It was all based on opinion and emotion." PO Morgan stated that he spoke to Mr. [REDACTED] that way because he was teaching Mr. [REDACTED] statistics on crime rates in New York City which was a function of being a police officer.

Patrol Guide procedure 200-02 (**BR 10**) states that officers are to respect the dignity of each individual and render services with courtesy and civility.

Because PO Morgan did not render his services with courtesy and civility when he called Mr. [REDACTED] “stupid, uneducated, ignorant, and dumb,” and it did not serve any valid law enforcement purpose, it is recommended that **Allegation E** be *substantiated*.

Allegation (F) Abuse of Authority: Police Officer John Plumitallo failed to provide [REDACTED] with a business card.

Allegation (G) Abuse of Authority: Police Officer Kevin Morgan failed to provide [REDACTED] with a business card.

It was undisputed that PO Morgan and PO Plumitallo did not provide Mr. [REDACTED] with a business card.

Mr. [REDACTED] stated (**BR 06**) that he did not receive a business card during this incident.

PO Plumitallo stated (**BR 08**) that he did not offer Mr. [REDACTED] a business card. PO Plumitallo’s understanding of when to provide a business card was after an interaction where the person is stopped. PO Plumitallo did not think he had any on him but did not remember. It was PO Plumitallo’s understanding that when he did not have a business card, he should provide his name, command, and “everything.” PO Plumitallo did not recall providing his name or command to Mr. [REDACTED]. PO Plumitallo did not recall seeing PO Morgan give a business card.

PO Morgan stated (**BR 09**) that he did not provide a business card to Mr. [REDACTED]. It was PO Morgan’s understanding that he was supposed to provide a business card when he had one at the end of every stop. If he did not have a business card, then he is to provide the information for the civilian to write it down or record. PO Morgan did not have business cards on him and did not know for sure whether he provided his name or shield number. PO Morgan did not know whether PO Plumitallo provided a business card.

NYC Administrative Code § 14-174 (**BR 11**) states that during a law enforcement activity, officers shall identify themselves by providing their name rank and command, provide an explanation for the law enforcement activity, and offer a business card at the conclusion of such activity. Law enforcement activity includes pedestrian stops, searches of a person, and frisks.

Patrol Guide procedure 203-09 (**BR 12**) states that when officers interact with a member of the public during a law enforcement activity, including a stop, frisk, and search of person, then officers are to courteously state their name, rank, shield number and command, explain the reason for the law enforcement activity, and offer a right to know business card upon the conclusion of the law enforcement activity.

Because PO Morgan and PO Plumitallo did not provide their business cards at the conclusion of the stop, a law enforcement activity, it is recommended that **Allegations F and G** be *substantiated*.

Allegation (H) Other Misconduct Noted: Police Officer John Plumitallo failed to prepare a memo book entry as required.

It was undisputed that PO Plumitallo did not have a memo entry for this incident.

PO Plumitallo stated (**BR 08**) that he did not make a memo book entry because a gun arrest occurred afterward. PO Plumitallo’s memo book (**BR 13**) contained no entry related to this incident.

Patrol Guide procedure 212-08 (**BR 14**) states that all members of service below the rank of captain must make entries in an activity log documenting assignment received, action taken, and tasks performed.

Because PO Plumitallo did not make a memo book entry as required it is recommended that he be cited for *other misconduct*.

Allegation (I) Other Misconduct Noted: Police Officer Kevin Morgan failed to prepare a stop and frisk report as required.

Allegation (J) Other Misconduct Noted: Police Officer John Plumitallo failed to prepare a stop and frisk report as required.

It was undisputed that PO Morgan and PO Plumitallo stopped Mr. [REDACTED] and PO Plumitallo frisked him which constituted a level three encounter. It was also undisputed that a stop report was not prepared.

DAO confirmed that a stop report was not prepared (BR 15). PO Plumitallo and PO Morgan consistently stated (BR 08 and BR 09) that they did not think a stop report was prepared.

Patrol Guide procedure 212-11 (BR 16) states that an officer must prepare a stop report for all level three encounters.

Because neither PO Morgan nor PO Plumitallo prepared a stop report it is recommended that they both be cited for *other misconduct*.

Allegation (K) Other Misconduct Noted: Police Officer Kevin Morgan improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (L) Other Misconduct Noted: Police Officer John Plumitallo improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

It was undisputed that PO Morgan and PO Plumitallo disengaged their body-worn cameras before ending the interaction with Mr. [REDACTED].

PO Morgan's and PO Plumitallo's body-worn camera footage (BR 03, BR 04; videos and BR 05; summaries) both end with PO Morgan telling Mr. [REDACTED] that he does not listen. Mr. [REDACTED]'s cellphone footage (BR 01; video and BR 02; summary) shows that after PO Morgan and PO Plumitallo disengage their cameras, the officers stay on scene to continue the discussion for nearly three minutes. PO Morgan had disengaged his body-worn camera prior to making disrespectful and discourteous remarks to Mr. [REDACTED].

Patrol Guide procedure 212-123 (BR 17) states that it is mandatory for officers to activate their body-worn camera for any interactions with persons suspected of criminal activity. Officers may deactivate their body-worn camera once the investigative, enforcement, or other police action has concluded.

Because PO Morgan and PO Plumitallo deactivated their body-worn cameras before the conclusion of the encounter with Mr. [REDACTED] who was stopped as a subject of a possible crime, it is recommended that PO Morgan and PO Plumitallo be cited for *other misconduct*.

Civilian and Officer CCRB Histories

- Mr. [REDACTED] has been a party to two additional CCRB complaints and named a victim in eight allegations (BR 18).
 - 201601812 involved allegations of physical force which were unsubstantiated.
 - 201908463 involved allegations of a stop, frisk, search of person, and failure to provide a RTKA card. To date this investigation is still pending board review.
- PO Plumitallo has been a member of service for five years and named a subject in seven additional complaints and 25 allegations none of which were substantiated.
 - PO Plumitallo's CCRB history presents no apparent pattern pertinent to this investigation.
- PO Morgan has been a member of service for 10 years and named a subject in 17 additional complaints and 60 additional allegations, two of which were substantiated.
 - 201605124 involved a substantiated frisk allegation and a substantiated vehicle stop allegation.
 - PO Morgan's CCRB history presents no apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- On December 11, 2019, this case was sent to mediation. On October 15, 2020, this case was returned to investigations because Mr. [REDACTED] did not wish to have a remote mediation.
- As of December 18, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**BR 19**).
- According to the Office of Court Administration (OCA), from February 28, 2016, to February 16, 2021, Mr. [REDACTED] was convicted of violating Public Health Law 022 (once) and a fine was imposed (**BR 20**).

Squad No.: 10

Investigator:	<u>Kelly Lyon</u>	<u>Inv. Kelly Lyon</u>	<u>04/23/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>4/27/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date